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Annette W. Jarvis, Utah Bar No. 1649
 RAY QUINNEY & NEBEKER P.C.
 36 South State Street, Suite 1400
 P.O. Box 45385
 Salt Lake City, Utah 84145-0385
 Telephone: (801) 532-1500
 Facsimile: (801) 532-7543
 Email: ajarvis@rqn.com

and

Lenard E. Schwartzer
 Nevada Bar No. 0399
 Jeanette E. McPherson
 Nevada Bar No. 5423
 Schwartzer & McPherson Law Firm
 2850 South Jones Boulevard, Suite 1
 Las Vegas, Nevada 89146-5308
 Telephone: (702) 228-7590
 Facsimile: (702) 892-0122
 E-Mail: bkfilings@s-mlaw.com
 Attorneys for Debtors

**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

In re:

USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

In re:

USA CAPITAL DIVERSIFIED TRUST DEED
 FUND, LLC,

Debtor.

In re:

USA CAPITAL FIRST TRUST DEED FUND, LLC,

Debtor.

In re:

USA SECURITIES, LLC,

Debtor.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA First Trust Deed Fund, LLC

Case Nos. BK-S-06-10725 LBR
 Case Nos. BK-S-06-10726 LBR
 Case Nos. BK-S-06-10727 LBR
 Case Nos. BK-S-06-10728 LBR
 Case Nos. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under
 Case No. BK-S-06-10725 LBR

**DEBTOR'S LIMITED OPPOSITION
 TO EMERGENCY MOTION FOR
 ORDER REGARDING PROJECT
 DISBURSEMENT GROUP, INC.'S
 DISBURSEMENT OF INTEREST
 PAYMENTS TO DEBTOR
 [AFFECTS DEBTOR USA
 COMMERCIAL MORTGAGE
 COMPANY]**

Date of Hearing: June 15, 2006

Time of Hearing: 10:00 a.m.

SCHWARTZER & MCPHERSON LAW FIRM

2850 South Jones Boulevard, Suite 1

Las Vegas, Nevada 89146-5308

Tel: (702) 228-7590 · Fax: (702) 892-0122

On or about May 22, 2006, Project Disbursement Group, Inc. ("PDG") filed its Emergency Motion for Order Regarding Project Disbursement Group, Inc.'s Disbursement of Interest Payments to Debtor (the "PDG Motion"). Debtor USA Commercial Mortgage Company ("USACM") hereby files its Limited Opposition to the PDG Motion.

POINTS AND AUTHORITIES

Factual Background

As outlined in the PDG Motion, on or about May 12, 2006, Debtor USACM and PDG signed a "Stipulation And Interim Order Authorizing Project Disbursement Group, Inc. To Make Disbursements From Funds It Holds As Disbursement Agent" (the "Stipulation") with respect to the disbursement to USACM as Servicer of interest payments from interest reserves being held by PDG for various loans pursuant to certain Escrow Agreements and Control Services Agreements with Debtor USACM. A true and correct copy of the Stipulation as it was signed by Debtor USACM and PDG is attached hereto as **Exhibit "A"** and incorporated herein. The Stipulation was subsequently forwarded to the Court, but before entering the Stipulation, the Court requested that the Office of the United States Trustee and the Committees appointed in these jointly administered cases also execute the Stipulation. The Office of the United States Trustee has now executed the Stipulation, and Debtor USACM has circulated the Stipulation to counsel for the Committees¹ for their review. For that reason, the Stipulation has not yet been resubmitted to the Court.

Memorandum of Law

To the extent the PDG Motion constitutes an additional request by PDG that the Court approve and enter the Stipulation, Debtor USACM joins in that request by PDG. However, to the extent that PDG has now changed its mind, and the PDG Motion can be construed to seek other relief that is inconsistent with the Stipulation that has already been agreed to by PDG, such as permission from the Court for PDG "to retain the funds, to pay the funds to another party whom this Court directs, or to file a motion to interplead the funds with this Court," (see Page 4 of PDG

¹ At the time of circulation, Stutman Treister & Glatt was the only existing counsel in place for the Committees.

1 Motion), Debtor USACM objects to PDG's request for any relief that is not consistent with the
2 terms of the Stipulation.

3 Debtor USACM is entitled to collect its servicing fee from interest payments made on the
4 loans for which PDG is acting as disbursement agent. However, notwithstanding its agreement in
5 the Stipulation to begin making disbursements, PDG is still holding the interest reserves and not
6 disbursing them to Debtor USACM as Servicer as agreed between the parties. By holding on to
7 the interest reserves and not disbursing them, PDG is exercising control over property of Debtor
8 USACM's bankruptcy estate because the portion of the unpaid interest payments that is
9 attributable to Debtor USACM's servicing fee is property of Debtor USACM's bankruptcy estate.

10 PDG's continued refusal to disburse to Debtor USACM, notwithstanding its agreement to
11 do so in the Stipulation, is a violation of the automatic stay. PDG is holding significant sums in
12 the interest reserves, which should be paid over immediately to Debtor USACM pursuant to the
13 Stipulation. Under 11 U.S.C. § 362(a)(3), the filing of Debtor USACM's Chapter 11 bankruptcy
14 petition automatically operates as a stay, applicable to all entities, including PDG, of "any act to
15 obtain possession of property of the estate or of property from the estate or to exercise control over
16 property of the estate." PDG is exercising control inconsistent with the terms of the Control
17 Account Escrow Agreements and Security Agreements and the Stipulation over the interest
18 reserves that need to be used to pay interest payments on the loans for which PDG is acting as
19 disbursement agent, thereby causing damages to Debtor USACM as well as damaging the
20 borrowers for those loans. Debtor USACM reserves the right to seek sanctions against PDG for
21 this violation of the automatic stay.

22 It is significant that PDG has not indicated in the PDG Motion any reason why the interest
23 payments from the interest reserves that were originally funded through USACM as Servicer
24 should be made to any party other than to USACM as Servicer, which is consistent with the terms
25 of the Control Account Escrow Agreements and Security Agreements with PDG. Debtor USACM

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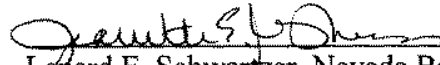
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1 respectfully submits that the payment arrangement agreed to in the Stipulation is the appropriate
2 relief to be granted for the PDG Motion.

3 Respectfully submitted on June 6, 2006.

4
5 Annette W. Jarvis, Utah Bar No. 1649
6 RAY QUINNEY & NEBEKER P.C.
7 36 South State Street, Suite 1400
8 P.O. Box 45385
9 Salt Lake City, Utah 84145-0385

10 and

11 
12 Leonard E. Schwartzer, Nevada Bar No. 0399
13 Jeanette E. McPherson, Esq., Nevada Bar No. 5423
14 SCHWARTZER & MCPHERSON LAW FIRM
15 2850 South Jones Boulevard, Suite 1
16 Las Vegas NV 89146
17 Attorneys for Debtor and Debtor-in-Possession

18 878181.02/dmm

SCHWARTZER & MCPHERSON LAW FIRM
2850 South Jones Boulevard, Suite 1
Las Vegas, Nevada 89146-5308
Tel: (702) 228-7590 · Fax: (702) 892-0122

EXHIBIT “A”

SCHWARTZER & MCPHERSON LAW FIRM

2850 South Jones Boulevard, Suite 1

Las Vegas, Nevada 89146-5308

Tel: (702) 228-7590 - Fax: (702) 892-0122

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Proposed Attorneys for Debtors and Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT**DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

Case No. BK-S-06-10725 LBR

Case No. BK-S-06-10726 LBR

Case No. BK-S-06-10727 LBR

Case No. BK-S-06-10728 LBR

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In re:

USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

Chapter 11

In re:

USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,

Debtor.

Jointly Administered Under

Case No. BK-S-06-10725 LBR

In re:

USA CAPITAL FIRST TRUST DEED FUND, LLC,

Debtor.

Date: N/A

Time: N/A

In re:

USA SECURITIES, LLC,

Debtor.

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA First Trust Deed Fund, LLC

STIPULATION AND INTERIM ORDER AUTHORIZING PROJECT DISBURSEMENT GROUP, INC. TO MAKE DISBURSEMENTS FROM FUNDS IT HOLDS AS DISBURSEMENT AGENT [AFFECTS USA COMMERCIAL MORTGAGE COMPANY]

Debtor and Debtor-in-Possession USA Commercial Mortgage Company ("Debtor" or "USA"), by and through its counsel, Jeanette E. McPherson, Esq. of the Schwartz & McPherson Law Firm, and Project Disbursement Group, Inc. ("PDG"), by and through its counsel, Matthew Q. Callister, Esq., hereby stipulate and agree as follows:

WHEREAS, the Debtor filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code on April 13, 2006 (the "Petition Date"), and the Debtor continues to operate its business and possess its property as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

WHEREAS, pursuant to certain pre-petition written agreements entitled "Control Account Escrow Agreement and Security Agreement" (the "Escrow Agreements") entered into by and among: (1) PDG, (2) the Debtor as authorized Agent and Servicer for certain loan investors, and (3) certain borrowers (the "Borrowers"), and pursuant to certain other pre-petition written agreements entitled "Agreement for Construction Control Services" (the "Control Services Agreements") entered into between PDG and the Debtor relating to loans to the Borrowers, PDG is currently acting as the disbursement agent for the Debtor (in its capacity as Agent and Servicer) and in some instances for the Borrower in connection with loans that were originated and are serviced by the Debtor (the "Loans"). The Escrow Agreements and the Control Services Agreements are collectively referred to hereinafter as the "Disbursement Agreements." Attached hereto as Exhibit A is a spreadsheet providing certain information about each of the Loans for which PDG acts as disbursement agent under the Disbursement Agreements.

SCHWARTZ & MCPHERSON LAW FIRM
2850 South Jones Boulevard, Suite 1
Las Vegas, Nevada 89146-5308
Tel: (702) 228-7590 · Fax: (702) 892-0122

1 **WHEREAS**, pursuant to the terms of the Disbursement Agreements, the Debtor as
2 Servicer forwarded to PDG prior to the Petition Date certain loan funds: (1) to be held by PDG as
3 interest reserves to be disbursed periodically to the Debtor (in its capacity as Agent and Servicer)
4 as interest payments for the Loans, and (2) in some cases, to be held by PDG as construction funds
5 to be disbursed as directed by the Borrowers, with the consent of the Debtor as Servicer, as
6 construction advances in connection with the Loans. PDG is still holding some of the loan funds
7 to be disbursed pursuant to the Disbursement Agreements as set forth above.

8 **WHEREAS**, after the Petition Date, PDG has continued to disburse loan funds as directed
9 by the Borrowers, with the consent of the Debtor as Servicer, as construction advances in
10 connection with the Loans, but PDG has temporarily stopped disbursing funds as interest
11 payments to the Debtor as Servicer from the interest reserve portions of the Loans.

12 **WHEREAS**, PDG asserts that, after the Petition Date, PDG was informed by several
13 investors that interest payments made by PDG to Debtor on or about March 2006 were not
14 subsequently disbursed by Debtor to said investors, and based on this information, PDG
15 temporarily stopped disbursing funds as interest payments to the Debtor.

16 **WHEREAS**, the Debtor asserts that it is authorized under the terms of Loan Servicing
17 Agreements entered into between the Debtor as Servicer and various loan investors for the Loans
18 (the "Investor Servicing Agreements") to provide periodic disbursement authorizations to PDG for
19 the payment of interest on the Loans from the interest reserves being held by PDG and, in some
20 cases, for construction funding on the Loans, consistent with the Disbursement Agreements and
21 the disbursement terms of the executed loan documents for the Loans.

22 **WHEREAS**, the Debtor asserts that its bankruptcy filing does not relieve PDG of any of
23 its obligations under the Disbursement Agreements, including its obligation to disburse interest
24 payments to the Debtor as Servicer from the interest reserves, and the Debtor further asserts that
25 providing these disbursement authorizations to PDG is in the ordinary course of Debtor's business
26 under Section 363(c)(1) of the Bankruptcy Code and that the Court also has the power under
27 Section 105(a) of the Bankruptcy Code to order PDG to comply with the Disbursement
28 Agreements and to follow the disbursement authorizations and directives PDG receives from the

1 Debtor regarding the Loans.

2 **NOW, THEREFORE**, in consideration of the foregoing, the Debtor and PDG agree as
3 follows:

4 1. The foregoing recitals are incorporated herein in full.

5 2. PDG is authorized to continue making disbursements to the Debtor as Servicer for
6 interest payments from the interest reserves and to continue making disbursements as directed by
7 the Borrowers, subject to the consent of the Debtor as Servicer, for construction funding,
8 according to the Disbursement Agreements and relevant loan documents.

9 3. The Debtor, as Servicer, is authorized to continue to exercise its powers on behalf
10 of the loan investors under the Investor Servicing Agreements and to continue to provide PDG
11 with necessary disbursement instructions and authorizations for the Loans that are consistent with
12 the Disbursement Agreements and terms of the loan documents for the Loans.

13 4. In those cases where Debtor as Servicer approves a Request for Disbursement and
14 sends to PDG the appropriate Instructions to Disburse, and PDG has previously received the
15 disbursement amount from Debtor as Servicer, then PDG shall immediately make the required
16 disbursements to the Debtor as Servicer for interest payments on the Loans from the interest
17 reserves being held by PDG and shall immediately make the required disbursements as directed by
18 the Borrowers, subject to the consent of the Debtor as Servicer, for construction funding on the
19 Loans.

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1 5. The Debtor will hold the funds received as interest payments from PDG in its DIP
2 Collection Account (which is separate from and will not be commingled with the Debtor's
3 separate operating account(s)) as described in motions filed by the Debtor in its bankruptcy case
4 and will not disburse such funds except as directed by the Bankruptcy Court.

5 DATED: May ____, 2006

DATED: May 12, 2006.

6
7 /s/ Jeannette E. McPherson
8 Jeannette E. McPherson, Esq.
9 Schwartz & McPherson Law Firm
10 2850 South Jones Boulevard, Suite 1
11 Las Vegas, NV 89146
12 Proposed Attorneys for Debtors and
13 Debtors-in-Possession

Matthew Q. Callister, Esq.
Callister & Reynolds
823 Las Vegas Boulevard South
Las Vegas, NV 89101
Attorneys for Project Disbursement Group, Inc.

14
15 **ORDER**

16 **IT IS SO ORDERED.**

17 Submitted By:

18
19 /s/ Jeannette E. McPherson
20 Jeannette E. McPherson, Esq.
21 Schwartz & McPherson Law Firm
22 2850 South Jones Boulevard, Suite 1
23 Las Vegas, NV 89146
24 Proposed Attorneys for Debtors and
25 Debtors-in-Possession
26
27
28

SCHWARTZ & MCPHERSON LAW FIRM

2850 South Jones Boulevard, Suite 1

Las Vegas, Nevada 89146-2888

Tel: (702) 398-3700 • Fax: (702) 398-0022

1 Approved/Disapproved by:

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James Patrick Shea, Esq.

Candace C. Carlyon, Esq.

Shea & Carlyon, Ltd.

233 South Fourth Street, Second Floor

Las Vegas, NV 89101

Proposed Special Counsel for Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC and USA Capital Diversified Trust Deed Fund, LLC; and for the Official Committee of Executory Contract Holders of USA Commercial Mortgage Company

Approved/Disapproved by:



Office of the U.S. Trustee

300 Las Vegas Boulevard South, Suite 4300

Las Vegas, NV 89101

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SCHWARTZ & MCPHERSON LAW FIRM

2001 South Jones Boulevard, Suite 1

Las Vegas, Nevada 89146-5305

Tel: (702) 226-3590 - Fax: (702) 852-0122

EXHIBIT “A”

May 4, 2006								
BANK NAME	BANK ACCT#	BALANCE 04/30/06	PROJECT NAME	INT ONLY	PROJECT #	SOFT	HARD	LENGTH
BK OF EAS VEGAS	#404001807	\$1,101,611	BARUSA	YES	13028	YES		
BK OF LAS VEGAS	#4540002853	\$628,719.19	HESPERIA II	YES	25071	YES	YES	
BANK OF NV	#555006605	\$1,700,340.53	LAKESIDE ESTATES	NO	16001	YES		YES
BK WEST OF NY	#0664441883	\$278,245.60	UNIVERSITY ESTATES	INTRMGR	25070	YES		YES
BUSINESS BANK	#3302024	\$390,600.84	LEVIN HILLS	YES	26001	NO		NO
TR SAVINGS BANK	#630036605	\$1,008.87	PLACER COUNTY	YES	24148	YES		YES
TR SAVINGS BANK	#6300387416	\$4,733.06	SVA	YES	26074	YES		YES
TR SAVINGS BANK	#63003783	\$38,624.25	HEA RIVERA LLC	YES	26112	YES		YES
INTERNATIONAL	#01103430	\$1,313.11	BOZEMAN HOMES	YES		YES		YES
CO MICHIGAN	#331016021	\$1,000.00	MILITARY COUNTRY CLUB	YES		YES		YES
VEARSDALE	#331016021	\$1,000.00	REDFIELD	YES		YES		YES
INTERNATIONAL	#331016021	\$1,000.00	RED BURNING GREEN	YES		YES		YES
INTERNATIONAL	#331016021	\$1,000.00	CLAYTON WOODCREST	YES		YES		YES
INTERNATIONAL	#331016021	\$1,000.00	WAGGAMORE	YES		YES		YES
AV FIRST BK	#0102022658	\$556,563.38	MTN HOUSE CASUS	NO	24084	NO		YES
RED ROCK COMM	#300004017	\$38,744.60	BY ENERGY	NO	24011	YES		YES
RED ROCK COMM	#300004578	\$624.95	OCEANATLANTIC ORIOGABO	NO	26012	YES		YES
RED ROCK COMM	#300004735	\$219,673.04	STANDARD PROPERTY DEVELOPER	YES	26083	NO		NO
SILVER STATE	#25015823	\$26,731.29	GARDENS	NO	23001	YES		YES
SILVER STATE	#25017659	\$88,988.02	GARDENS 2	NO	23437	YES		YES
SILVER STATE	#25015593	\$358,880.47	WEST HILLS	NO	24043	NO		YES
SILVER STATE	#2501988	\$4,632.78	DEL VALLE CAPITAL CORP LENDING	YES	25148	NO		NO
SILVER STATE	#25017500	\$19,212.88	TAPPA RANCH III	YES	25167	YES		NO
SILVER STATE	#25017659	\$46,403.56	RUNDY CANYON 415 MIL	NO	25188	YES		YES
SILVER STATE	#25017373	\$136,472.83	OCEAN ATLANTIC	NO	25178	YES		YES
SILVER STATE	#25017144	\$68,078.11	SLADE DEVELOPMENT	NO	25182	YES		YES
SILVER STATE	#25017008	\$89.68	GAZEWAY STONE	NO	25193	YES		NO
SILVER STATE	#25019998	\$45,788.00	SEASIDE	YES	26003	NO		NO
SILVER STATE	#25016970	\$48,714.91	6018 STREET VENTURE	YES	26004	NO		NO
SILVER STATE	#25017241	\$154,540.60	RUNDY CANYON 311 MIL	NO	26006	YES		NO
SILVER STATE	#25017275	\$76,593.15	RO RANCHO EXECUTIVE PLAZA	NO	26007	YES		YES

SONOMA BANK	0000112388	12388	SONOMA BANK	NO	255	YES	YES		
SONOMA BANK	0000112388	12388	SONOMA BANK	NO	255	YES	YES		
SONOMA BANK	0000112388	12388	SONOMA BANK	NO	255	YES	YES		
SONOMA BANK	0000112388	12388	SONOMA BANK	NO	255	YES	YES		
SONOMA BANK	0000112388	12388	SONOMA BANK	NO	255	YES	YES		
SONOMA BANK	0000112388	12388	SONOMA BANK	NO	255	YES	YES		
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SONOMA BANK	0000112388	12388	SONOMA BANK	NO	255	YES	YES		
SONOMA BANK	0000112388	12388	SONOMA BANK	NO	255	YES	YES		
VALLEY BANK	00000000	00000000	VALLEY BANK	YES	24422	YES	NO		
VALLEY BANK	00000000	00000000	VALLEY BANK	YES	25220	YES	NO		
VALLEY BANK	00000000	00000000	VALLEY BANK	YES	25098	YES	NO		
VALLEY BANK	00000000	00000000	VALLEY BANK	YES	25066	YES	NO		
VALLEY BANK	00000000	00000000	VALLEY BANK	YES	25136	YES	NO		
VALLEY BANK	00000000	00000000	VALLEY BANK	YES	25022	YES	YES		

88,122,028.89